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EXTRAORDINARY

PART II—Section 2

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RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 7th August, 1962:—

BILL No. XII OF 1962.

A Bill to amend the Special Marriage Act, 1954.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

1. This Act may be called the Special Marriage (Amendment) Short title.
Act, 1962.

43 of 1954.

2. In section 4 of the Special Marriage Act, 1954,—

(i) for clause (d), the following clause shall be substituted,
namely:—

Amendment
of section 4.

“(d) the parties are not within the degrees of prohibited relationship;

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and”;

(ii) the following *Explanation* shall be inserted at the end—

Explanation.—In this section, “custom”, in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family;

Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied—

(i) that such rule has been continuously and uniformly observed for a long time among those members;

(ii) that such rule is certain and not unreasonable or opposed to public policy; and

(iii) that such rule, if applicable only to a family, has not been discontinued by the family.'.

STATEMENT OF OBJECTS AND REASONS

Under the Special Marriage Act, 1954 marriage can take place between any two persons who are not within the degrees of prohibited relationship. Ordinarily, such marriage takes place between persons professing different faiths or belonging to different communities or groups and the question of prohibited degrees between the parties does not normally arise. There may, however, be some cases where marriage is solemnized under the Special Marriage Act between persons professing same faith and belonging to the same group or family. In such a case, marriage cannot take place between the parties who are within the degrees of prohibited relationship.

2. Under the Hindu Law also, marriage is normally prohibited between persons who are within the degrees of prohibited relationship or who are *sapindas* of each other. But in some parts of India and in some tribes and communities, there is a well-recognised custom which permits marriage between persons within the degrees of prohibited relationship. In the Hindu Marriage Act, 1955, a specific provision was, therefore, inserted to save such custom. In the Special Marriage Act, however, marriage between persons within the degrees of prohibited relationship is totally prohibited and no exception has been made on grounds of custom or usage as in the Hindu Marriage Act. This sometimes causes inconvenience and hardship. It is, therefore, considered necessary that a specific provision should be inserted in the Special Marriage Act to permit marriage between persons within the degrees of prohibited relationship, if there is a well-recognised custom applicable to one of the parties under which such marriage is permissible. Hence, the Bill.

NEW DELHI;
The 1st August, 1962.

A. K. SEN.

S. N. MUKERJEE,
Secretary.

